THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

February 6, 2012

Brigadier General Mark Martins
Chief Prosecutor, Office of Military Commissions
1610 Defense Pentagon
Washington, DC 20301

Re: *United States v. Al-Nashiri* (Military Commission Trial Judiciary, Guantanamo Bay)

Dear General Martins:

The Defendant in the above-captioned case filed a motion on January 31, 2012 to depose His Excellency Ali Abdullah Saleh. President Saleh is currently the President and sitting head of state of the Republic of Yemen.

With regard to this motion, the Department of State recognizes and allows the immunity of President Saleh as a sitting head of state from the Military Commission Trial Judiciary's jurisdiction to compel an oral deposition of President Saleh in the pending case. Under common law principles of immunity articulated by the Executive Branch in the exercise of its constitutional authority over foreign affairs and informed by customary international law, President Saleh, as the sitting head of state of a foreign state, is immune while in office from the jurisdiction of the Military Commission to compel his oral deposition. Accordingly, the Department of State requests that you convey the Department's determination of President Saleh's immunity to the Military Commission at the earliest opportunity.

This letter recognizes the particular importance attached by the United States to avoiding compulsion of an oral deposition of President Saleh in view of international norms and the implications of the litigation for the Nation's foreign relations.

Sincerely,

Harold Hongju Koh
Legal Adviser